

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – SAN FRANCISCO

In the Matter of)	Case No.: 12-N-14546-PEM
)	
FRANCIS HOTCHKISS LEWIS, JR.,)	DECISION AND ORDER OF
)	INVOLUNTARY INACTIVE
Member No. 61894,)	ENROLLMENT
)	
<u>A Member of the State Bar.</u>)	

Respondent Francis Hotchkiss Lewis, Jr. (respondent) was charged with (1) willfully violating California Rules of Court, rule 9.20, by willfully disobeying or violating a court order requiring compliance with rule 9.20 and (2) willfully violating Business and Professions Code section 6103 by willfully disobeying or violating a court order that respondent comply with certain probation conditions. He failed to participate either in person or through counsel, and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the notice of disciplinary charges (NDC),

¹ Unless otherwise indicated, all references to rules are to this source.

and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied and, therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on December 18, 1974,³ and has been a member since then.

Procedural Requirements Have Been Satisfied

On August 17, 2012, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, at his membership records address. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.) The State Bar did not receive a return receipt.

Thereafter, the State Bar attempted to notify respondent of these proceedings. As respondent is currently on disciplinary probation, Deputy Trial Counsel Maria Oropeza (DTC Oropeza) contacted the assigned probation deputy to ascertain whether respondent's profile contained any other address. She also attempted to reach respondent by telephone at respondent's official membership records telephone number and left a message for respondent on

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

³ The NDC fails to set forth the date of respondent's admission. Accordingly, the court takes judicial notice, pursuant to Evidence Code section 452, subdivision (h), of the State Bar's membership records pertaining to respondent, which reflect that respondent was admitted to practice law in this state on December 18, 1974.

the answering service. She also sent an e-mail to the e-mail address respondent provided to the State Bar for State Bar purposes.⁴

Respondent failed to file a response to the NDC. On September 25, 2012, the State Bar filed and properly served a motion for entry of default on respondent by certified mail, return receipt requested, to his membership records address. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on October 11, 2012. The order entering the default was properly served on respondent at his membership records address by certified mail, return receipt requested. The order was returned to the State Bar Court by the U.S. Postal Service as unclaimed and unable to forward. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that time.

Respondent also did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On May 30, 2013, the State Bar filed and properly served the petition for disbarment on respondent by certified mail, return receipt requested, to his membership records address. As required by rule 5.85(A), the State Bar reported in the petition that (1) as of May 30, 2013, respondent has not contacted the deputy trial counsel or the State Bar since October 11, 2012, the date the order entering his default was filed and served; (2) there are no other disciplinary matters pending against respondent; (3) respondent

⁴ Effective February 1, 2010, all attorneys are required to maintain a current email address to facilitate communications with the State Bar. (Cal. Rules of Court, rule 9.7(a)(2).)

has a record of prior discipline; and (4) the Client Security Fund has not made any payments resulting from respondent's conduct in this matter. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on June 28, 2013.

Respondent has a prior record of discipline.⁵ Pursuant to a Supreme Court order filed on July 8, 2011, respondent was suspended for two years, the execution of which was stayed, and he was placed on probation for two years on conditions including that he be suspended for a minimum of the first nine months of probation and until he makes and furnishes proof of specified restitution. Respondent participated in this prior disciplinary matter. The court found that respondent (1) accepted representation of clients when the interests of the clients potentially conflicted and without the clients' informed written consent; (2) represented two or more clients and entered into an aggregate settlement of the claims of or against the clients without the informed written consent of each client; (3) failed to render appropriate accounts to a client; (4) failed to promptly pay or deliver, as requested by the clients, any funds, securities or properties in the possession of the member which the clients are entitled to receive; (5) failed to maintain funds in a client trust account on behalf of his clients; and (6) committed an act of moral turpitude with gross negligence by misappropriating client funds.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that

⁵ The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence and directs the clerk to include copies in the record of this case.

respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d).)

Case Number 12-N-14546 (Rule 9.20 & Violation of Court Order)

Count One - respondent willfully violated California Rules of Court, rule 9.20 (duties of disbarred, resigned or suspended attorneys) by not filing a declaration of compliance with rule 9.20 in conformity with the requirements of rule 9.20(c), thereby failing to timely comply with the provisions of the Supreme Court's July 8, 2011 order requiring compliance with California Rules of Court, rule 9.20.

Count Two – respondent willfully violated Business and Professions Code section 6103 (violation of court order) by failing to comply with probation conditions by failing to pay \$2,200 to two individuals as ordered by the Supreme Court in its July 8, 2011 disciplinary order and failing to submit proof of such payment to the Office of Probation.

Disbarment is Recommended

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment is recommended. In particular:

(1) the NDC was properly served on respondent under rule 5.25;

(2) reasonable diligence was used to notify respondent of the proceedings prior to the entry of his default, as the State Bar (1) filed and properly served the NDC on respondent by certified mail, return receipt requested, at his membership records address; (2) contacted the assigned probation deputy; (3) attempted to reach respondent by telephone at his official membership records telephone number; and (4) sent an e-mail to the e-mail address respondent provided to the State Bar for State Bar purposes;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Francis Hotchkiss Lewis, Jr. be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

California Rules of Court, Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.⁶

///

///

⁶ It is not recommended that respondent be ordered to pay restitution in this matter as he remains under an obligation to pay restitution in Supreme Court matter S192797 (State Bar Court No. 08-O-14364).

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Francis Hotchkiss Lewis, Jr. , State Bar number 61894, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: August _____, 2013

PAT McELROY
Judge of the State Bar Court